



STATE OF DELAWARE  
DEPARTMENT OF SAFETY AND HOMELAND SECURITY  
**DIVISION OF STATE POLICE**  
P.O. Box 430  
DOVER, DELAWARE 19903

September 13, 2019

Mr. Jonathan Rudenberg  
MuckRock News  
DEPT MR 63054  
411A Highland Ave  
Somerville, MA 02144-2516

RE: 63054-03861224

Dear Mr. Rudenberg:

By letter you made a request under the Delaware Freedom of Information Act (FOIA) for: "Any audio recordings and/or transcripts in the possession of your agency that capture conversations held over the radio during any and all incidents at the James T. Vaughn Correctional Center between the dates of January 31, 2017 and February 3, 2017."

The Division of the Delaware State Police (DSP) has reviewed your request and determined that your request(s) are exempt under all of the following exemptions:

First, any reports are exempt as they are part of an investigatory file compiled for civil or criminal law enforcement purposes, 29 Del. C. § 10002(1)(3). Second, any such criminal history and arrest records are non-public documents and exempt from FOIA, see 29 Del. C. § 10002(1)(4). Additionally, the records you requested are considered exempt under see 29 Del. C. § 10002(1)(5); Intelligence files compiled for law-enforcement purposes, the disclosure of which could constitute an endangerment to the local, state or national welfare and security. Also, to the extent that the records you seek pertain to litigation, please be advised that among the categories of information that FOIA exempts from public records are "[a]ny records pertaining to pending or potential litigation which are not records of any court." 29 Del. C. § 10002(1)(9). The purpose of the exemption is to help maintain a level playing field, as "Delaware courts will not allow litigants to use FOIA as a means to obtain discovery which is not available under the court's rules of procedure." Op. Att'y Gen. 06-1D21 (Oct. 23, 2006) (citing *Mell v. New Castle County*, 835 A.2d 141, 147 (Del. Super. 2003) ("Mell"). Finally, DSP further objects on the basis that the request appears to originate from out of the State, public bodies are only required to comply with FOIA when the requesting party is a citizen of the State of Delaware. See *McBurney v. Young*, 569 U.S. 221 (2013); see also *Del. Op. of the Att'n'y Gen.* 16-1B20 (Sept. 30, 2016), unless a valid Delaware address for the requester is provided. The Division of the Delaware State Police considers your FOIA request closed.

Sincerely,

Colonel Nathaniel McQueen, Jr.  
Superintendent